

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
<hr/>)	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

Its Attorneys:

James W. Olson
Indra S. Chalk
Michael T. McMenamin
Robin E. Tuttle

1401 H Street, NW, Suite 600
Washington, DC 20005
(202) 326-7248

August 6, 2004

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND SUMMARY	1
DISCUSSION	2
I THE DESIGNATION OF MULTIPLE ELIGIBLE TELECOMMUNICATIONS CARRIERS FOR RECEIPT OF HIGH-COST SUPPORT HAS A SIGNIFICANT IMPACT ON PRESERVATION OF THE UNIVERSAL SERVICE FUND.....	2
II THE JOINT BOARD’S RECOMMENDED PERMISSIVE FEDERAL GUIDELINES FOR ETC DESIGNATION SHOULD BE MANDATORY REQUIREMENTS.....	5
III ADDITIONAL ETCS IN RURAL AREAS SHOULD ONLY BE DESIGNATED AFTER THE STATE COMMISSION OR THE FCC CONDUCTS A RIGOROUS PUBLIC INTEREST TEST, BASED ON STRENGTHENED STANDARDS.	7
A No Carrier Should Be Designated as an Additional ETC Unless It Complies with the Following Requirements.....	8
1. Demonstration of Financial Viability.	8
2. Ability To Provide the Supported Services.	9
3. Commitment To Comply with Emergency Standards.....	10
4. Commitment To Comply with Consumer Protection Measures and Service Quality Standards.....	10
B Competition Should Not Be a Determining Factor in Designating Additional ETCs.	11
C Additional ETCS Should Be Designated at a Study Area Level and Should Be Required To Serve the Entire Study Area.....	12
D All ETCS Should Certify Annually Their Use of Universal Service Funds and Their Compliance with All Designation Requirements.....	15
IV UNIVERSAL SERVICE SUPPORT SHOULD BE PROVIDED TO ALL LINES TO ENSURE THAT THE GOALS FOR UNIVERSAL SERVICE ARE MET AND TO ENCOURAGE DEVELOPMENT OF NETWORKS.....	16
V SUPPORT BASED ON A PRIMARY LINE PLAN WOULD BE UNWORKABLE DUE TO SIGNIFICANT ADMINISTRATIVE DIFFICULTIES	19
VI THERE IS NO NEED TO FREEZE PER-LINE SUPPORT UPON ENTRY OF ADDITIONAL ETCS.....	21
CONCLUSION.....	22

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
<hr/>)	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA)¹ submits its comments through the undersigned in response to the Federal Communications Commission's (FCC's or Commission's) Notice of Proposed Rulemaking (NPRM or Notice),² seeking comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board)³ concerning the process for designation of eligible telecommunications carriers (ETCs) and the Commission's rules regarding high-cost universal service support in the above-referenced docket.

INTRODUCTION AND SUMMARY

Federal universal services funds are vital for ensuring that carriers can provide all consumers across the country with access to basic and advanced telecommunications and information services that are reasonably comparable in type and rates to those provided in urban areas. Yet, these federal universal services funds are limited and the exponential growth in the

¹ USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data, and video services over wireline and wireless networks.

² See *Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 04-127 (rel. June 8, 2004).

³ *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) (Recommended Decision).

demand for support from these funds is threatening the very existence of universal service across the nation. The Commission must act now to preserve universal service to all Americans. It can do this by strengthening the process for designating an eligible telecommunications carrier (ETC), specifically by imposing additional mandatory requirements, not permissive guidelines, which requirements will ensure that ETC applicants undergo a rigorous public interest test before receiving ETC designation, and by requiring that ETC designations are made according to other limiting factors (e.g., competition should not be a determining factor; new ETCs should serve the entire study area; and all ETCs should make annual certifications about their use of funds and compliance with ETC designation requirements). Equally important for the preservation of universal service is a Commission affirmation that all lines should be supported, not just primary lines, in order to ensure that the goals of universal service are met.

DISCUSSION

I. THE DESIGNATION OF MULTIPLE ELIGIBLE TELECOMMUNICATIONS CARRIERS FOR RECEIPT OF HIGH-COST SUPPORT HAS A SIGNIFICANT IMPACT ON PRESERVATION OF THE UNIVERSAL SERVICE FUND.

When a carrier is designated as an eligible telecommunications carrier for receipt of high-cost support from the Universal Service Fund (USF or Fund), it receives such support because the area it serves is prohibitively expensive and consumers will not or cannot pay the market-based price for the full range of telecommunications services that are reasonably comparable to those available competitively in urban parts of the country. When no carrier can provide these services to customers without support from the Fund, there is no economic justification to provide support to more than one such carrier. To do otherwise is to squander limited federal funds. In addition, when multiple ETCs are designated by state regulatory agencies or the Commission in areas where even one carrier cannot survive by operating under market forces,

this is a de facto decision to subsidize competition.⁴ Yet, the designation of additional ETCs is often made with total disregard for the fact that the basic purpose of the Fund is not to provide consumers in high-cost areas (usually rural areas) with a competitive choice for basic and advanced telecommunications services, but rather to simply provide them with access to such services that are comparable in quality and rates to those services that are available in urban areas.

USTA maintains that there is no public interest in providing federal funds to designate multiple ETCs in high-cost areas served by rural and other⁵ telephone companies.⁶ Still, the number of carriers designated as ETCs for receipt of federal funds continues to grow almost exponentially and there can be no doubt that the increasing number of carriers seeking high-cost support from the Fund is causing, and will continue to cause, the size of the Fund to grow at the same exponential rate, threatening the continued viability of the Fund.⁷ The Commission must

⁴ Commissioner Kevin Martin, in a partially dissenting statement to the Joint Board's Recommended Decision, stressed that he was "hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier." *Federal-State Joint Board on Universal Service*, Recommended Decision of the Federal-State Joint Board on Universal Service, Separate Statement of Commissioner Kevin J. Martin Dissenting in Part, Concurring in Part, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004).

⁵ Although section 214 of the Communications Act of 1934, as amended (Act), states that a "State commission . . . shall, in the case of all other areas [referring to non-rural areas], designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission," this designation is prefaced on it being "consistent with the *public interest*, convenience, and necessity". 47 U.S.C. §214(e)(2) (emphasis added).

⁶ If a state chooses to designate additional ETCs, for purposes of competition or otherwise, those ETCs should receive support from state universal service funds, not federal funds.

⁷ Commissioner Kathleen Abernathy testified before a U.S. House of Representatives Subcommittee, stating that the "increasing entry of wireless carriers and other competitors as eligible telecommunications carriers (ETCs) has raised questions about the long-term sustainability of the high-cost support mechanisms." Written Statement of Kathleen Q. Abernathy on *The Future of Rural Telecommunications: Is the Universal Service Fund Sustainable?*, before the United States House of Representatives, Committee on Small Business, Subcommittee on Rural Enterprise, Agriculture and Technology (Sept. 25, 2003).

take action now to preserve the Fund. USTA has previously urged the Commission to broaden the base of contributors as one way of preserving the Fund,⁸ but even if the base is broadened, and more urgently if it is not, the resources to fund universal service are not limitless, necessitating careful management in order to serve the public interest. Thoughtful conservation of the Fund to implement the goals mandated by Congress for preservation and advancement of universal service must be paramount. Accordingly, the Commission should find that any carrier seeking ETC status for receipt of federal funds must comply with certain mandatory requirements.

Similarly, Commissioner Abernathy noted more than a year ago that in the fourth quarter of 2002 competitive ETCs received approximately \$14,000,000 in high-cost support, which was seven times higher than the support they received in the first quarter of 2001. *See* Written Statement of Kathleen Q. Abernathy, Commissioner, Federal Communications Commission, on Preserving and Advancing Universal Service before the United States Senate Subcommittee on Communications of the Senate Committee on Commerce, Science, and Transportation at 3 (Apr. 2, 2003).

Even more telling, the Joint Board cited to the Universal Service Administrative Company (USAC) data in the Recommended Decision that shows “2 competitive ETCs received just over \$500,000 in high-cost support in 1999, 4 competitive ETCs received \$1.5 million in 2000, 25 competitive ETCs received \$17 million in 2001, and 64 competitive ETCs received \$47 million in 2002. In 2003, 109 competitive ETCs received approximately \$131.5 million in high-cost support. Based on USAC quarterly projections, support for competitive ETCs will increase from \$62.9 million in the fourth quarter of 2003, to \$111.5 million in the second quarter of 2004, an increase of 77%.” Recommended Decision, fn. 183, *citing to* Federal Universal Service Support Mechanisms Fund Size Projections and Contribution Base for the Second Quarter 2004, Appendix HC 18-21 (Universal Service Administrative Company, Jan. 31, 2004).

⁸ *See Federal-State Joint Board on Universal Service*, Reply Comments of the United States Telecom Association, CC Docket No. 96-45 at 3-5 (filed May 13, 2002) (USTA May 2002 Reply Comments). Specifically, USTA advocated that the “contribution bases should be broadened for all purposes funded by the universal service mechanism. Broadband service providers, whether considered information service providers or telecommunications service providers, should be included as supporters of universal service” USTA May 2002 Reply Comments at 3.

II. THE JOINT BOARD’S RECOMMENDED PERMISSIVE FEDERAL GUIDELINES FOR ETC DESIGNATION SHOULD BE MANDATORY REQUIREMENTS.

USTA urges the Commission not to issue *permissive* federal guidelines for states or itself to consider in proceedings to designate ETCs, as recommended by the Joint Board.⁹ The guidelines recommended by the Joint Board – and other considerations – should be *mandatory* requirements by which states must assess ETC applicants for two important reasons.

First, states should not be setting the minimum standards that qualify carriers to obtain ETC status and the receipt of federal money. Rather, any designation that results in the disbursement of federal funds should be based, at a minimum, on certain mandatory, uniform federal standards. Without such mandatory requirements, there is no assurance that federal universal service funds will be disbursed to similarly qualified carriers.¹⁰ If the Commission adopts permissive guidelines for designating ETCs, states could independently determine – as they currently do – whether or not to require a carrier to comply with any particular guideline. Not only could there be variation of ETC qualifications from state to state, but there could also be variation within a state from one ETC applicant to another. Certainly the ultimate disbursement of these valuable and limited federal funds warrants more certain federal direction in the qualification process that leads to receipt of these funds.

Second, there is an incentive for states to approve as many ETC applications as possible because such approval permits those carriers that obtain ETC status to receive federal universal service money. However, states should be weighing any possible benefits of additional ETCs against the additional costs imposed on the Fund, but the reality seems to be that they focus only

⁹ See Recommended Decision, ¶2.

¹⁰ Notably, the Joint Board states that it “strongly encourage[s] the adoption of the proposed guidelines,” but there is no guarantee that states will do so. Recommended Decision, ¶13.

on the perceived benefits (which they usually define solely as increased competition) without assessing the negative impact on the Fund. When considering the public interest in designating additional ETCs, states should be cognizant that the federal government is not, and should not be, in the business of subsidizing competition. It bears repeating over and over again that the purpose of federal high-cost universal service support is to provide consumers in high-cost areas with access, not competitive access, to basic and advanced telecommunications services that are reasonably comparable in quality and rates to those services that are available in urban areas. In order for there to be adequate funds to ensure that consumers in high-cost areas will have access to such services in the future, the Commission must preserve the integrity of the Fund (*i.e.*, make sure the Fund is being used for the purposes intended by Congress when it adopted section 254 of the Telecommunications Act of 1996 (1996 Act or Act)). To do this, the Commission must control the growth in demand for support from the Fund. To do that, the Commission must establish mandatory requirements for which carriers can be designated as ETCs.

The continued advancement of the U.S. economy depends on consumers in high-cost areas having access to services that allow them to connect across town, across the country, and across the world, but not at the expense of a Fund that is growing out of control because states are designating carriers as ETCs without regard to the purposes intended by the Act and without regard to the limited funds available to make sure there is universal service.¹¹

¹¹ The Joint Board recognizes that “[w]hile Congress delegated to individual states the right to make ETC decisions, collectively these decisions have national implications.” Recommended Decision, ¶16. Most notably, “[t]hey . . . affect the overall size of the *federal* fund.” *Id.* (emphasis added).

III. ADDITIONAL ETCs IN RURAL AREAS SHOULD ONLY BE DESIGNATED AFTER THE STATE COMMISSION OR THE FCC CONDUCTS A RIGOROUS PUBLIC INTEREST TEST, BASED ON STRENGTHENED STANDARDS.

Designation as an ETC, which is most often made by a state regulatory agency, is the first step in the process for any carrier to receive universal service support. However, it is a critically important step in the process because, as noted above, once designated as an ETC, that carrier is eligible to receive universal service support. Because it is increasingly clear that the Commission must control the growth of the Fund, the importance of conducting a public interest test for any carrier seeking ETC designation in order to receive high-cost universal service support cannot be overstated.¹² In fact, the Act, by stating that any ETC designation must be “consistent with the public interest,” demands that a public interest test be conducted, whether the carrier seeking ETC status is doing so in a high-cost area served by a rural or other telephone company.¹³ USTA urges that state regulatory agencies and the Commission must conduct rigorous public interest tests, based on strengthened standards, and according to other limiting factors.

¹² Commissioner Adelstein of the FCC, Commissioner Thompson of the Regulatory Commission of Alaska, and Commissioner Rowe of the Montana Public Service Commission noted this important point in their Separate Statement to the Joint Board Recommended Decision, stating that “when designating an ETC in an area served by a rural telephone company we must take greater care in examining the public interest to determine the wisdom of multiple ETCs in rural high cost areas. Establishing a meaningful public interest test [footnote omitted] and providing meaningful guidance on ETC designations will help limit federal universal service funding to those providers who are committed to serve rural communities.” *Federal-State Joint Board on Universal Service*, Joint Separate Statement of Commissioners Jonathan S. Adelstein, G. Nanette Thompson, Regulatory Commission of Alaska, and Bob Rowe, Montana Public Service Commission Approving in Part, Dissenting in Part to the Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) (Separate Statements of Adelstein, Thompson, and Rowe).

¹³ 47 U.S.C. §214(e)(2). More specifically, this section states that “[u]pon request and *consistent with the public interest*, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1).” *Id.* (emphasis added)

A. No Carrier Should Be Designated as an Additional ETC Unless It Complies with the Following Requirements.

For the most part, USTA concurs with the Joint Board's recommendations for additional minimum qualifications to those specified in section 214(e)(1) when state regulatory agencies and the Commission are evaluating ETC designation requests. Again, USTA emphasizes that these additional qualifications should be mandatory, not permissive. USTA does not recommend that the Commission eliminate any of the current ETC requirements specified in section 214(e)(1).

1. Demonstration of Financial Viability.

USTA supports the addition of a requirement that ETC applicants demonstrate that they have adequate financial resources and are financially sound before they receive ETC status. USTA agrees with the Joint Board that "it would neither be prudent nor serve the public interest if a financially unsound carrier is designated as an ETC, receives universal service support and yet is still unable to achieve long-term viability that is sufficient to sustain its operations."¹⁴ If the incumbent ETC (*i.e.*, the ILEC) terminates its service offerings or relinquishes its ETC status, the new ETC must be able to provide consistent and reliable service to the incumbent ETCs' customers and any potential customers in the service area. There should be no threat to consumers that they will lose their service due to the financial instability of the new ETC. Unlike in urban areas where there is always a service provider ready and able to offer services if a consumer's current service provider stops offering service, such is rarely the case in high-cost areas. As described further below, the new ETC must become a carrier of last resort, like the incumbent ETC, with the financial wherewithal to operate accordingly. In order to verify a carrier's financial viability, USTA continues to recommend that "[s]tates should review a

¹⁴ Recommended Decision, ¶22.

carrier's financial statements and access to lines of credit and such other information necessary to determine whether a carrier has the wherewithal to build out its network and provide service over the long term.”¹⁵

2. *Ability To Provide the Supported Services.*

USTA believes there are several factors that must be assessed when determining whether an ETC applicant can provide the supported services for which universal service support is available. First, as USTA stated in its comments to the Joint Board on this matter, the applicant must be able to “provide all elements of the current definition of universal service and lifeline service, including toll-blocking capabilities, established by the FCC.”¹⁶ Second, as USTA also previously commented to the Joint Board, an ETC applicant “must have a published tariff with terms and conditions under which services will be offered and a plan for building out its network once it receives ETC designation and must make demonstrative progress toward achieving its build-out plan in order to retain ETC designation.”¹⁷ Because federal funds are at stake, build-out plans must be closely monitored. If a carrier that receives ETC status does not meet its build-out requirements then its ETC status should be revoked and it must agree to return any federal universal service support received.¹⁸ Third, an ETC applicant must be ready and able to serve all customers in the applicable service area without relying on the facilities of the ILEC in

¹⁵ *Federal-State Joint Board on Universal Service*, Comments of the United States Telecom Association, CC Docket No. 96-45 at 13 (filed May 5, 2003) (USTA May 2003 Comments).

¹⁶ USTA May 2003 Comments at 14. In addition, “[a]ny waivers of carriers’ obligations to provide any elements of universal and lifeline service granted by state public utility commissions should be of limited duration.” *Id.*, n.34.

¹⁷ *Id.* at 14.

¹⁸ When states and the Commission are considering what constitutes a reasonable request for service when network build out is necessary to provide such service, their determination should be made pursuant to state law and applicable company tariffs. *See Recommended Decision*, ¶27.

order to provide such service. The new ETC must become a parallel carrier of last resort to the incumbent ETC.

3. *Commitment To Comply with Emergency Standards.*

USTA agrees with the Joint Board's recommendation that ETC applicants should be required to demonstrate the ability to remain functional in emergency situations.¹⁹ This requires that all ETCs must operate as a carrier of last resort, using their own networks. It is only by relying on its own network to provide service that an ETC can ensure functionality in emergencies. In other words, if an ETC relies on the network of another carrier it will not have the direct control to prevent network disruptions or restore network outages and thus cannot ensure functionality in emergencies. Emergency situations demonstrate a particularly important reason that all ETCs must function as true carriers of last resort.

4. *Commitment To Comply with Consumer Protection Measures and Service Quality Standards.*

The Joint Board recommends that state commissions may impose consumer protection requirements on ETC applicants as part of the designation process.²⁰ If a carrier is receiving federal funding based on a public interest finding that it will meet the universal services principles listed in section 254 of the Act, the public interest also demands that current consumer protections and regulations designed to govern the relationship between consumers and the incumbent ETC be applied to the new ETCs as well. Consumers should not receive diminished protections when switching from one ETC provider to another. Accordingly, USTA agrees with the Commission that ETC applicants should comply with applicable state consumer protection measures, which should include measures relating to disconnections, deposits, billing, late fees,

¹⁹ See Recommended Decision, ¶30.

²⁰ See Recommended Decision, ¶31.

and complaints, as well as non-technology specific service quality standards, reporting requirements, and billing requirements, such as customer rep service answer time, operator answer time, troubles per 100, and held orders. In short, all ETCs should be subject to any consumer protection requirements that relate to or are necessary for universal service.²¹ With regard to service quality standards, only standards that are imposed by state regulatory agencies should be required for ETC designation purposes.

B. Competition Should Not Be a Determining Factor in Designating Additional ETCs.

Section 254(b) of the Act sets forth six specific principles upon which the Commission should base policies for the preservation and advancement of universal service: (1) quality and rates, (2) access to advanced services, (3) access in rural high cost areas, (4) equitable and nondiscriminatory contributions, (5) specific and predictable support mechanisms, (6) and access to advanced telecommunications services for schools, health care and libraries.²² Although the Commission has identified competition as a seventh principle,²³ USTA stresses that facilitating competition in high-cost areas, using federal funds, should not be a determining factor in designating additional ETCs in such areas. Competition must be measured in tandem with the other six principles for preserving and advancing universal service, as opposed to the goal of

²¹ USTA clarifies here its previous comments to the Joint Board in this docket. USTA did not intend to suggest that “competitive ETCs should be required to comply with all of the standards imposed on wireline incumbent LECs” as was stated in the Recommended Decision, or that states should require parity in standards for parity’s sake. Recommended Decision, ¶34. Rather, USTA urges the Commission only to require compliance with consumer protection measures, including service quality standards, that relate to or are necessary for universal service.

²² 47 U.S.C. §§254(b)(1)-(5).

²³ Section 254(b)(7) allows for the preservation and advancement of universal service through “[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.” 47. U.S.C. § 254(b)(7).

competition receiving the preeminent treatment accorded by state regulatory agencies in their ETC designation proceedings. Certainly competition and customer choice in high-cost areas are appropriate public interest goals, but they are not the only public interest goals that states should consider when evaluating an ETC applicant. States must consider the public interest of ensuring that the federal Fund will be viable and have sufficient funds to provide universal service through true carriers of last resort. The impact of designating multiple ETCs in high-cost areas for the sole purpose of competition is an out-of-control expansion of the Fund, which will ultimately result in the demise of the universal service concept when the Fund can no longer support such competitive designations. Again, designations of additional ETCs made solely for the purpose of promoting competition should not be subsidized by federal universal service funds. However, if states want to designate ETCs primarily to foster competition in high-cost areas, they should support such competition through state-funded universal service programs. Arguably, if states were required to provide the funding necessary to support additional ETCs solely for the purpose of competition, they would be more likely to apply more stringent ETC requirements when designating such ETCs.

C. Additional ETCs Should Be Designated at a Study Area Level and Should Be Required To Serve the Entire Study Area.

USTA continues to support the recommendation of the Joint Board in its First Recommended Decision²⁴ that study areas of rural telephone companies be retained as the service areas for which ETCs applicants must agree to provide service in order to receive universal service support based on the same reasons originally provided by the Joint Board: “(1) the potential for ‘cream skimming’ is minimized by retaining study areas because competitors, as

²⁴ See *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 12 FCC Rcd 87 (1996) (First Recommended Decision).

a condition of eligibility, must provide services throughout the rural carrier's study area; (2) the 1996 Act, in many respects, places rural carriers on a different competitive footing from other local exchange companies; and (3) there would be an administrative burden imposed on rural carriers by requiring them to calculate costs as something other than the study area level.”²⁵ USTA opposes any redefinition of rural study areas for purposes of limiting where an ETC applicant must serve. Any carrier seeking ETC status should commit to serve the entire study area as does the incumbent ETC.

If a rural ILEC's study area is redefined for purposes of universal service support, new ETCs may seek to serve only the redefined service areas where the average revenue per customer is highest, but not those service areas where the average revenue per customer is lowest. Yet, incumbent ETCs as carriers of last resort for the entire original study area must continue to serve that original study area, including those areas with the lowest average revenue per customer. If study areas are redefined, incumbent ETCs will likely lose customers to new ETCs in the higher revenue areas, weakening their financial viability as they continue to carry the responsibility and cost of serving the original study area while their competitors serve only the most lucrative service areas of the redefined study area. In a weakened financial state, incumbent ETCs will be unable to update and expand their networks and provide quality service to all customers in the original study area.

The Joint Board discusses rural carriers' use of disaggregation in the context of redefinition of study areas, but the Commission should be very clear that disaggregation of a study area is for the purpose of targeting universal service support and should not be a factor in determining whether or not to redefine a study area. Disaggregation results in universal service

²⁵ Recommended Decision, ¶50, *referencing* the First Recommended Decision.

support being targeted so that the “per-line level of support is more closely associated with the cost of providing service.”²⁶ In fact, the Rural Task Force found, and the Commission agreed, that “*support* should be disaggregated and targeted below the study area level”²⁷ because the “provision of uniform *support* throughout the study area of a rural carrier may create uneconomic incentives for competitive entry and could result in support not being used for the purpose for which it was intended, in contravention of section 254(e).”²⁸ USTA emphasizes that the Rural Task Force and the Commission were addressing the disaggregation of *support* in study areas, not disaggregation (or rather redefinition) of study areas. When support is disaggregated, it does not follow that the carrier for whom it is disaggregated no longer has to serve the entire study area. Similarly, disaggregation of support does not mean that new ETCs should not be required to serve the same entire study area as does the ILEC. As noted above, disaggregation more closely associates the cost of providing service with the area being served and, in fact, disaggregation of support facilitates the ability of competitors that are qualified to receive universal service support to serve the entire study area. Without disaggregation, carriers will have perverse incentives to seek ETC status in order to arbitrage or cream skim the support levels provided to the ILEC in the lower-cost portions of the study area.

Finally, as USTA has explained previously, any carrier designated as an additional ETC must become a carrier of last resort. If a new ETC serves only the most lucrative areas of an

²⁶ *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, CC Docket Nos. 96-45 and 00-256, 16 FCC Rcd 11244, ¶146 (2001) (Rural Task Force Order).

²⁷ Rural Task Force Order, ¶144 (emphasis added).

²⁸ *Id.*, ¶145 (emphasis added).

ILEC study area because it has been redefined to facilitate such cherry picking, the new ETC is not really operating as a carrier of last resort in the same manner as the ILEC that serves the entire study area. The disbursement of federal universal service funds should be made to similarly qualified applicants for the same type of services in the same geographic region. To do otherwise creates opportunities for cream skimming and inappropriate use of the Fund.

D. All ETCs Should Certify Annually Their Use of Universal Service Funds and Their Compliance with All Designation Requirements.

USTA agrees with the Joint Board that all ETCs should certify annually that they are using their universal service support to provide the supported services and for associated infrastructure costs.²⁹ In addition, USTA believes that such certifications should include a statement that a carrier is in compliance with all ETC designation requirements with which it had to comply in order to be designated as an ETC. Although USTA does not seek to increase regulatory burdens on any carrier,³⁰ including ILECs, the certification process should not consist of carriers make a filing that is simply granted rubber stamp approval. If a carrier cannot demonstrate compliance with the ETC designation requirements and the proper uses of their support, state regulatory agencies (or the Commission if it originally granted ETC status) should decertify any such carrier as an ETC, thereby removing the carrier's eligibility for federal universal service support. Finally, as with the ETC qualifications, USTA urges the Commission to make annual state certifications a mandatory requirement.

²⁹ See Recommended Decision, ¶46.

³⁰ Annual certifications should be administratively workable and cost effective. They should not rise to the level of a full-blown rate case.

IV. UNIVERSAL SERVICE SUPPORT SHOULD BE PROVIDED TO ALL LINES TO ENSURE THAT THE GOALS FOR UNIVERSAL SERVICE ARE MET AND TO ENCOURAGE DEVELOPMENT OF NETWORKS.

The Commission should reject the Joint Board's recommendation that high-cost universal service support should only be provided to a single connection (or primary line) that provides access to the public telephone network. The first principle identified in the Act for preserving and advancing universal service is that quality services should be available.³¹ The second principle is that advanced telecommunications and information services should be provided.³² It should be obvious that these services cannot be provided if networks cannot be built, maintained, expanded, and improved. Services ride over networks.³³ Importantly, networks in high-cost areas cannot be built, maintained, expanded, and improved if carriers do not have specific, predictable, and sufficient universal service support, which is required by the Act.³⁴ Support provided only on a single-connection or primary-line basis is not predictable or sufficient. If carriers receive support only on a line-by-line basis, they will never know if they have sufficient support to build and maintain the networks of which individual lines are a part and to which they connect so that customers can access their neighbors and the rest of the world.

There are a myriad of other problems that arise under a single connection/primary line plan. USTA elaborates on just a few of them.

First, as is evident by the name of the plan, carriers will not receive universal service support for any secondary lines. As a result, carriers will be forced to charge market rates (or the

³¹ See 47 U.S.C. §254(b)(1).

³² See 47 U.S.C. §254(b)(2).

³³ The growth of IP-enabled services that ride over broadband networks in urban areas will ultimately expand to rural areas, but only if there are broadband networks in rural areas.

³⁴ See 47 U.S.C. §254(b)(5).

cost of the second line plus a reasonable profit) for secondary lines.³⁵ The rates for secondary lines in high-cost areas will rise significantly, effectively limiting or even barring customer access to secondary lines in these areas.³⁶ When this happens, consumers in high-cost areas no longer have access to quality services at *affordable rates* and carriers are no longer providing reasonably comparable services at *reasonably comparable rates* to those available in urban areas where consumers can purchase secondary lines at affordable rates. Rates for secondary lines in high-cost areas will not be comparable to those in urban areas. Thus, a primary line plan will result in a violation of sections 254(b)(1) and (3) of the Act. Importantly, it is not for regulators to decide that only some portion of services and rates in high-cost areas should be reasonably comparable to those in urban areas. Congress has already made the determination that consumers in high-cost areas should have access to telecommunications and information services that are reasonably comparable to those provided in urban areas and at rates that are reasonably comparable to those charged for similar services in urban areas.

Second, consumers with primary and secondary residences that are both located in high-cost areas³⁷ may not have access to an affordable telephone line at the second residence if the primary line plan is interpreted to exclude lines at such secondary residences as secondary lines that are not eligible for universal service support. In such a scenario, consumers may not be able

³⁵ ILECs in high-cost areas that do not receive universal service support for secondary lines should not be subject to economic regulation for any secondary lines.

³⁶ Similarly, a primary line plan will have the practical effect of impeding consumer access to and use of information services, which services are usually accessed over second lines.

³⁷ There are many consumers that need affordable telephone service in both primary and secondary residences. For example, some retirees live in one part of the country during the summer and another part the country during the winter; some household employees (e.g., child care workers) live with their employer during the week and at another residence on the weekend; some migrant workers live in different parts of the country based on seasonal work.

to pay full market price for telephone service at the second residence, leaving them without access to health, emergency, and community services when they inhabit that second residence.

Third, adoption of a primary line plan will directly influence whether or not businesses will locate or remain in a high-cost (usually rural) area. Very few businesses, even small businesses, can operate with only a single connection.³⁸ Again, under a primary line plan the costs for secondary lines will rise dramatically and become a determining economic factor in whether a business will operate in a high-cost/rural area.³⁹ Yet, some offices do not have the luxury of deciding whether or not to operate their businesses where they would not be impacted by a primary line plan. For example, city halls, police stations, churches, schools, and other public bodies must operate in high-cost areas and these types of offices need multiple telephone connections. However, it will likely be cost prohibitive for these types of entities to obtain secondary lines.

The impact of supporting only single connections or primary lines will be drastic and severe. Carriers that lose support as they lose lines – both incumbent ETCs and new ETCs – will no longer be able to maintain their networks, much less expand or improve them. This spiral downwards will most likely lead to such carriers going out of business, or at best severely limiting their service, leaving no carrier in some areas, not even the new ETCs, to provide service in America's high-cost areas. The consequences of providing universal service support

³⁸ Commissioner Adelstein has voiced opposition to the primary line plan, emphasizing that businesses in rural areas depend on reasonably priced secondary lines for voice, data, and fax lines. *See* Separate Statement of Adelstein, Thompson, and Rowe to the Recommended Decision.

³⁹ Commissioner Adelstein maintains that “If we don’t care for these communities as Congress intended, photographs may well be all that are left as rural areas dwindle when faced with additional economic hardships.” *Id.*

based on a single connection or primary line could be devastating to rural America and other high-cost areas of America.

V. SUPPORT BASED ON A PRIMARY LINE PLAN WOULD BE UNWORKABLE DUE TO SIGNIFICANT ADMINISTRATIVE DIFFICULTIES

USTA also opposes the implementation of a primary line plan for distribution of universal service support because such a plan would simply be unworkable due to numerous and significant administrative difficulties. The Commission should be fully aware of the administrative issues and the economic impact on carriers and the industry. USTA discusses below some of the most recognizable and problematic administrative issues.

There will be great difficulty in determining who the customer is in a multi-person household⁴⁰ or in a multiple business office space or in determining where the primary line is when individuals have multiple residences. Who will make these determinations and how will they be tracked and administered? How will disputes be resolved? Telephone companies do not have the resources to monitor the living situations of their customers, nor do they want to inquire about and be responsible for private information. Will these determinations be made by customer ballot? If so, will there be a third-party administrator? How would third-party administration be funded? What will happen if a customer does not make an affirmative choice of a primary line carrier? Will there be a default provider, and who will decide which carrier serves as the default provider? These are difficult questions that must be considered before adopting a primary line plan.

⁴⁰ Certainly there are reasonable situations in a multi-person household when a number of different people living in the house (for example, college students sharing a house, recent graduates sharing an apartment as they enter the workforce, and a grandparent living with his child and his family) (and similarly, each business operating out of one office space) should each have access to a primary line that is benefited by universal service support, making it affordable and reasonably comparable to lines in urban areas. In fact, family households today often need multiple phones (or lines) – one for parents and sometimes several for children.

Carriers – at least most ILECs – will have great difficulty in distinguishing between primary and secondary lines in their billing systems. Billing systems will have to be modified in order to make this distinction for those lines charged to customers at a lower price because they are supported by universal service and those secondary lines that will need to be charged at the full market rate. Carriers will have to incur significant costs to modify their billing systems to accommodate a primary line plan.

Adoption of a primary line plan is likely to result in massive customer confusion that will undoubtedly have a negative impact on the industry. In order for customer service representatives to carefully explain how customers must designate a primary line and why some lines (*i.e.*, secondary lines) cost more than other lines (*i.e.*, primary lines), they will have to be highly trained to make these clarifications, which will cause carriers to incur additional personnel and training expenses. Despite careful and detailed explanations about what a primary line plan means to consumers, there is still likely to be significant customer confusion, creating a ripe opportunity for customers to be victimized by slamming.

Shifting universal service support to a primary line plan will also result in a major upheaval of how carriers allocate costs and recover them. For example, carriers may need to raise subscriber line charges (SLCs) for some customers, if they have not exceeded the SLC cap, in order to recover costs if they lose primary line support to a competitor, but also to help keep costs for secondary unsupported lines lower than the market rates that would otherwise have to be charged because such secondary lines do not receive support. More generally, carriers will need to reexamine how they allocate costs among lines in anticipation that they will lose support when they lose a primary line to a competitor. There are several detrimental impacts of such

reexamination and increased SLCs: disruption in prices, increased billing costs, possibility of customer confusion and anger, and likelihood of losing a customer.

Providing universal service support under a primary line plan is inconsistent with rate-of-return (ROR) regulation, which provides carriers operating under such regulation with the ability to earn a designated rate of return. ROR carriers recover their interstate costs and make their interstate profit through end user rates (or SLCs) and universal service support. If a carrier loses a primary line to a competitor it would no longer receive universal service support and it would not be able to earn its revenue requirement. Adoption of a primary line plan could prevent thousands of ROR carriers from obtaining their revenue requirements, threatening their very viability. Quite simply, carriers will not be able to operate under both rate-of-return regulation and a primary line plan.

VI. THERE IS NO NEED TO FREEZE PER-LINE SUPPORT UPON ENTRY OF ADDITIONAL ETCs

USTA opposes the Joint Board's recommendation that high-cost support in areas served by rural carriers should be capped on a per-line basis when a competitive carrier is designated as an ETC.⁴¹ USTA commented to the Joint Board previously – and nothing has changed since then – that there is no data suggesting that the growth in support for ETC lines is a result of ILECs losing a significant number of lines to new ETCs, resulting in a reduction in the number of ILEC lines in a study area but increasing the cost and support per line.⁴² Rather, data suggests that the growth in ETC support is largely a result of wireless services that are purchased in addition to, rather than as a substitute for, wireline service in many areas.⁴³ Accordingly,

⁴¹ See Recommended Decision, ¶56.

⁴² See USTA May 2003 Comments at 9.

⁴³ *Id.* at 9-10.

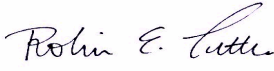
freezing per line support upon entry of additional ETCs in a high-cost market will do little to control the size of the Fund. A freeze is not warranted and should not be implemented.

CONCLUSION

For the reasons states above, USTA urges the Commission to issue mandatory requirements for designation of eligible telecommunications providers and to not implement a primary line plan as proposed by the Joint Board.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: 

James W. Olson
Indra Sehdev Chalk
Michael T. McMenamin
Robin E. Tuttle

Its Attorneys

1401 H Street, NW, Suite 600
Washington, D.C. 20005-2164
(202) 326-7300

August 6, 2004

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on August 6, 2004, the aforementioned Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

Sheryl Todd
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Room 5-B540
Washington, DC 20554
Sheryl.Todd@fcc.gov

Best Copy and Printing, Inc.
Portals II
445 12th St. S.W.
Room CY-B402
Washington DC 20554
fcc@bcpiweb.com



By: _____
Meena Joshi